“REHABILITATION OF YOUNG OFFENDERS: A SOCIO - LEGAL STUDY WITH SPECIAL REFERENCE TO THE STATE OF MAHARASHTRA”

SUBMITTED BY

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"To have once been a criminal is no disgrace.
To remain a criminal is the disgrace"

- Malcolm X –

"All men make mistakes, but a good man yields when he knows
His course is wrong, and repairs the evil. The only crime is pride."

- Sophocles, Antigone

1 Introduction

"Child is the father of man" and in order to enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education; acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.[1] Children are greatest national asset and resource. Children should be allowed and provided opportunity to grow up to become law abiding citizens, physically fit, mentally alert and morally healthy, endowed with skills and activations needed by the society. Equal opportunities for development to all children during the period of growth should be provided for reducing inequality and ensuring social justice, which in turn would serve as an effective tool to curb delinquency in juveniles. Children are expected to be obedient, respectful, law abiding and imbibe virtues and good quality in them. Due to various reasons children do not follow settled societal obligations and legal dictum. In recent years, it has become very clear that juvenile delinquency is the most important aspect of the subject matter of criminology. These years have also seen an urge for an objective.

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1 V.R. Krishna Iyar, "Jurisprudence of Juvenile Justice: A preambular perspective", quoted in article "Right of Child and Child Labour: A Critical Study" by Sriniwas Gupta. JILI, XXXVII (1995) p. 53

In recent years, it has become very clear that juvenile delinquency is the most important aspect of the subject matter of criminology. These years have also seen an urge for an objective appraisal of the problem and the development of the new techniques. Delinquent behaviour has assumed serious forms among the juveniles, which is a sign of sick and weak society. The disorder and destruction due to deviant behaviour, a worldwide phenomenon, is assuming alarming proportions in social organizations and is awakening call to those who are either in its grip or are likely to get struck. Juvenile delinquency, as a legal concept is of recent origin. The two cannot be separated since one of the reasons for crime and its continuance into adult life is the ineffective control and treatment of juveniles. Juvenile delinquency is a big breading centre of criminals from their childhood.

The word delinquency is derived from the Latin word "delin" meaning de i.e. away and linquere i.e. to leave thus, meaning to leave or to abandon. Originally, the word had an objective meaning as it referred to parents who neglected and abandoned their children. In present day, it is used and applied to those children who indulge in criminal and harmful activities. Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his criminal acts. The juvenile is a child who is alleged to have committed or violated some law which declares the act or omission on the part of the child as an offence. Juvenile and minor in legal terms are used in different context. Juvenile is used when reference is made to a young criminal offenders and minor relates to legal capacity or majority.[2]

In India, until passing of Children Act, 1960 there was no uniformity regarding age limitation of juvenile delinquent. Bombay Children Act 1948 defined "Child" to mean a boy who has not attained the age of sixteenyears or a girl who has not attained the age of eighteen years.[3]The U.P. Children Act defined "Child" as a person under the age of sixteen years. The East Punjab Act, Andhra Pradesh (Telangara Area) Children Act also prescribed the sixteen years age[4] limit but included the children who are in certified schools, though they have attained the age of 16 years.

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2 Black Dictionary of Law.

3 The Bombay Children Act, 1948, Section 4.

4 The Uttar Pradesh Children Act. 1951, Section 2(4)

Juvenile Justice Act, 1986 is the first comprehensive legislation in India to deal with juvenile delinquency. The said Act, 1986 was repealed by 2000 Act and further replaced by Juvenile justice (care and protection) Act 2015.In India, under section 82 of the Indian Penal Code, nothing is an offence which is done by a child under seven years of age (*doli incapax*) and under section 83 nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion. Maturity of understanding is to be presumed between the ages of seven and twelve unless the contrary is to be proved.[5]

In BandhuaMuktiMorcha'scase[6]the importance of a child has been highlighted observing that including the children being lights to the society as a whole. If children are deprived of their childhood socially, economically, mentally, the nation's get deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. If we can control juvenile delinquency we shall be controlling and checking the future criminals in making an open admitted fact is that tendency among young people to commit crime and indulge in anti social activities is increasing. The National Policy for Children has rightly observed that the Nation's children are supremely important asset. Childhood is a universal human experience and has vital stakes. The future, development and stability of a society depend on the quality of its children. Child welfare is of supreme importance to mankind. At present time the child is considered as an important social unit and is held to be entitled to all that makes for healthy living, sufficient recreation, schooling adopted to his natural living methods, intelligent home care and the right to develop his abilities to their fullest extent[7]

The rehabilitation of offenders can be defined and understood in a number of different ways. At different points in the history of modern penal systems different models of rehabilitation have been current, and each of them has different implications for policy, for sentencing and for direct practice with offenders.

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5 PSA Pillai, revised by Dr. K I Vibhute, Law of crimes, (2012), 11 editions

6 BandhuaMuktiMorcha vs. Union of India, AIR 1997 SC 2218, page 2220.

7 Edvin R.A. Saligaman (Editor-in-Chief), "Encyclopedia of the Social Sciences" Vol.III, Macmillan Company 1951 reprint, page 380.

The rehabilitation which is complex, expensive, difficult and unsure of success needs arguments in its support when it competes for resources, or needs to establish its claims against other aims of sentencing such as deterrence or incapacitation. In short, the desirability of rehabilitation is not always taken for granted, and its advocates need from time to time to deploy defenses or justification of what they propose.

At the outset, it is important to realize that, this is not simply a matter of deploying evidence about effectiveness. In recent years, we have tended to take for granted that the most important question to ask about rehabilitation is 'What works?' or, in other words, what means can we use to pursue our goals in the most effective manner?

There has been less discussion about what those goals should actually be. Usually, the implied goal seems to be less re-offending by sentenced offenders, but other versions of rehabilitation have pursued very different goals: for example, the salvation of human Souls, or the healing of damaged relationships, or a greater sense of safety or security in the everyday life of communities. These different goals reflect the different values placed on different kinds of outcome, and these values themselves often draw on further assumptions about human nature or human purposes.

The point of this kind of argument is that if our goals are normally taken for granted rather than discussed, they can become confused or incoherent. Justifications for rehabilitation are essentially moral arguments about what society ought to do in relation to offenders, and arguments about what we ought to do cannot simply be derived from evidence about what we can do. There are plenty of things we can do which we clearly ought not to do. However, there are other kinds of relationship between evidence and justification. One as moral philosophers frequently remind us, is that 'ought toimply can' we cannot reasonably claim that someone has a duty to achieve what is impossible. Another is that different kinds of argument logically require certain kinds of evidence: for example, arguments based on the effectiveness of rehabilitation require empirical evidence of the changes it produces in offending behaviour, whilst arguments based on the rights of offenders require demonstrations of consistency with generally accepted principles concerning human rights. Such demonstrations belong to a logically different category of evidence, to which no amount of reconviction-counting could be relevant.

The endure of researcher is to carry out the detail study so as to meet out the problems and perspective of juvenile delinquency as well as provide appropriate solution for their rehabilitation.

Limitations of study

- To carry out research the term Young offenders are used which means Juvenile delinquents between the age group of 14 to 18 years. The researcher is unable to observe the deviant behaviour of all age group.
- The researcher has concentrated on rehabilitation process in the state of Maharashtra as a whole.
- The researcher has excluded from his study those delinquents who involved in the offences of serious and heinous in nature and whose trial is pending before the regular court.

2 Aims& Objectives of Research

- To critically analyze the concept and practice of rehabilitation India.
- To focus on the development of the process of 'Rehabilitation' in the state of Maharashtra.
- Main emphasis of the study will be to assess and evaluate the role of the state in discharging their duties while rehabilitation of young offenders
- It will suggest a suitable structure for Indian legal system and to channelize it to carry out the process of 'Rehabilitation' in mitigating the demand of human rights perspective.
- Major task of the study will cover the critical analysis of the concept of reformation and see its suitability in Indian scenario to improve administrative system of reformation in the state of Maharashtra.
- The study will prove significant and considerable in drafting policy in the interest of young offenders by the state.

- To suggest and consider the points, views, and suggestions made under the present research study while drafting and implementing the law on this subject matter.

3. Hypothesis

1. Criminology is a neglected branch of a criminal law in India.
2. Bad family, bad association and poverty are leads to Juvenile Delinquency.
3. Societal sensitization is essential to accept delinquent juveniles.
4. Lack of rehabilitation centers leads to delinquency among juvenile.
5. Present legal system and administration is not effective for rehabilitation of young offenders.

4 Research Methodology

The methodology adopted for the study is doctrinal and non doctrinal. The whole work involves primarily the content analysis of the Substantive laws, Procedural laws, Special laws, Constitutional provisions, Human Rights perspective and judicial pronouncements.

The researcher will carry out survey, conduct interviews of concern authorities and young offenders to analyze the problems and perspective of rehabilitation process at Kolhapur District.

The researcher will take aid of text books, journals, bare acts, news paper, magazines, internet sources etc. In addition the Law Commission of India Reports, the Report of Commissions on criminal law to analyze the same to arrive at result on the proposed research topic.

5 Review of Literature

Present subject matter of the research has been studied time and again in various legal systems with the intention to adapt new trends in socio-legal aspect for rehabilitation of young offenders and conditions of the state and to give it a legal status. The jurists, legal researchers, judges, philosophers have made a huge discussion in the area of 'Rehabilitation process' because the role and functions of the state is changing day by day.

Juvenile Justice Act, 1986 defined a juvenile or child to be a person who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age. The JJA Act,

1986 was repealed by 2000 Act and the distinction with regard to age between male and female juveniles has been done away with by the Government of India to cope with the international obligations. Now age of juvenile in conflict with law for male and female has been fixed at 18 years. A juvenile in conflict with law under the JJ (C & P) Act, 2000 is a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence. Further the Act is replaced by Juvenile Justice (care and protection) Act 2015 which provides for criminalizing age of juvenile has reduced from 18 to 16 years of age, depends up on nature of offence committed.

For conducting the present research work the researcher has gone through the various Laws, textbooks, reference books and other study material like journals, reports and judicial dictum.

It is my observation that, in the present legal system rehabilitation of young offenders is not effectively carried out as required. There is need of special care and attention by administration while dealing with Child in conflict with law. It is equally important to note that, the society is also not sensitize about rehabilitation of young offenders. Hence there is a scope for carrying out research to find out adequate solution for effective implementation of rehabilitation process of Young Offenders.

6 The scheme of the study (Research Design)

The researcher intends to take up the study in the following manner. The chapters are purely tentative which may be readjusted according the instructions of guide or may be reshaped in the light of upcoming research.

CHAPTER- I General Introduction

I Introduction

- Importance of the study
- Research problem
- Objective of the study
- Hypothesis
- Methodology
- Scheme of chapterization

CHAPTER- II Juvenile Delinquency in India

- Historical background of Juvenile Delinquency
- Causes of Juvenile delinquency
- Developments in sentencing policy to delinquents
- Present trend in India
- Genetic defects and delinquency
- Juvenile Delinquency in western countries – a comparative study

CHAPTER- III Rehabilitation process in India – Need for revision

- Sentencing discretion as provided in substantive and procedural laws
- Methods and techniques to regulate rehabilitation discretion
- rehabilitation guidelines in western countries
- Need for rehabilitation guidelines in India – judicial and institutional observation

CHAPTER- IV Rehabilitation process: International perspective

- Worldwide trend
- Rehabilitation of young offenders a human rights perspective
- International legal view as to juvenile delinquent
- A comparative study of rehabilitation process in developed countries

CHAPTER- V Role of judiciary and administration in rehabilitation process

- Treatment to delinquent Judicial trend and perspective
- Establishment of rehabilitation centers need of hour
- Specially trend police vis-à-vis rehabilitation
- Changing parameters of administrative authority

CHAPTER- VI Rehabilitation of young offenders: with special reference to the state of Maharashtra.

- Assessment of the data collected by judicial officers
- Analyse the data collected by police officers
- Content analysis of data collected from J. J. Board, C.W.C. and NGO
- Assessment of data collected from in and out delinquents

CHAPTER- VII Conclusion and suggestions

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- Juvenile Justice (care and protection) Act 2015

Research Student	**Research Guide**
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